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Utah Supreme Court

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In the Supreme Court of the State of Utah

John B. Yeates,
Plaintiff and Appellant

vs.

Archie L. Budge,
Defendant

and

Archie L. Budge,
Plaintiff

vs.

Mrs. John B. Yeates,
Defendant and Appellant

Brief of Appellants
Appeals No's 7851-7852

Appeal from the District Court of Cache County, Utah

Honorable Lewis Jones, District Judge

FILED Geo. D. Preston,
Attorney for appellants.
JUN 26 1912

Clerk, Supreme Court, Utah

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In the Supreme Court of the State of Utah

John B. Yeates,
Plaintiff and Appellant

vs.

Archie L. Budge,
Defendant

and

Archie L. Budge,
Plaintiff

vs.

Mrs. John B. Yeates,
Defendant and Appellant

Brief of Appellants
Appeals No's 7851-7852

STATEMENT OF FACTS

(Reference to pages of reporter's transcript)

On September 11, 1951 Mrs. Yeates was driving her husband's car from Nibley to the Logan Cache Library in Logan. Nibley is about 5 miles south of Logan. Under the State Highway System, Utah highway No. 1 runs from the Idaho Line north of Logan, through Logan, south to Wellsville and then south through the State. Utah highway No. 101 runs from Logan south through Nibley. Thus immediately south of Logan the same roadway is both No. 1 and No. 101. Approximately one-half mile south of Logan City limits, these highways divide and form an almost perfect "Y".

When Mrs. Yeates left the library she drove south on Highways 101 and 1 and as she approached the “Y” at about 5:45 P. M., Mr. Budge was approaching the “Y” from the south and traveling north into Logan and in a 35 mile zone (tr. 62) at 35 mph. Mrs. Yeates was going about 25. (tr. 7)

Where the two numbered highways are consolidated they have four lanes. After they divide, each is a two lane highway.

The two cars met at the “Y”. Mrs. Yeates attempted to keep in her lane and stay on No. 101 by turning her car to the left of center of the intersection, and to the left of Mr. Budge, (tr. 9) to avoid a head on collision. But, Mr. Budge tried to turn to his right of the center of the intersection, and to pass in front of Mrs. Yeates, who seeing there was about to be a wreck applied her brakes in an attempt to avoid the accident. (tr. 9). She was practically stopped when struck. She had been following an ambulance traveling in front of her.

Mrs. Yeates signaled that she was going to turn left in order to get into the left lane of the southbound traffic (tr. 16) and Budge was approaching and about on the intersection (tr. 18) at about 35 mph. He had clear vision on the road and traffic to the City Limits of Logan, $\frac{1}{4}$ to $\frac{1}{2}$ mile. He saw the ambulance, but did not know whether it would take highway No. 1, or 101 (tr. 63), thought it had the right of way, but he did not

slow down for Mrs. Yeates because he thought he had the right of way over her (tr. 72).

(There was some confusion in the Court's mind about the pleadings (tr. 73, 74), and the Lower Court reversed it's decision of non-suit when the fact was called to his mind that Mrs. Yeates was not acting as agent for Mr. Yeates and before this was cleared up, the Court stated: "The motion for a nonsuit against Mr. Yeates—is granted as to the complaint and the counter-claim. We'll make them (Budge) go forward and see whether or not the defendant can extricate himself from the legal dilemma he finds himself in, and whether you can clear him of the imputation of proximate causation on his part so as to entitled him to a verdict". (tr. 62).)

Budge could have let Mrs. Yeates pass in front of him or he could have passed to her left (tr. 73), but he tried to pass in front of her and in so doing struck her broadside on the East side of the highway.

Mr. Yeates brought the suit against Budge for damage to his car, and Budge brought a suit against Mrs. Yeates for the damage to his car. The Court consolidated the trials, and all parties have stipulated that the two appeals might be consolidated.

STATEMENT OF POINTS

That the court erred as follows:

Point 1. (No. 7851) By making it's judgment in favor of defendant and against the plaintiff.

Point 2. (No. 7851) By making it's finding No. 4 to the effect that the sole proximate cause of the accident was the negligence of Bertha Yeates in making a left hand turn at the intersection in front of defendant's vehicle and when defendant's vehicle was in such close proximity to Yeates' vehicle as to constitute an immediate hazard, and in making it's conclusion of law No. 1.

Point 3. (7851) In failing to make a finding that defendant's negligence was a concurrent and contributing proximate cause of the accident, and failing to enter judgment in favor of plaintiff and against defendant, and assessing damages accordingly.

Point 1. (No. 7852) By making and entering it's judgment in favor of plaintiff and against defendant in any sum whatsoever.

Point 2. (No. 7852) By making it's findings Nos. 3 & 5 in that the Court found that plaintiff's injuries were caused by the negligence of defendant, which was the sole proximate cause of the accident.

Point 3. (No. 7852) By failing to find that plaintiff was guilty of contributory negligence which proximately caused his damages barring his recovery, and by making it's conclusion of law, No. 2.

ARGUMENT.

The argument herein contained will consider all of the Statement of Points together beause there is only one question—i. e. was Mr. Budge guilty of negligence and was his negligence a contributing proximate cause of the wreck.

All through the case my opponents went on the theory that my client was making a left turn into highway No. 101. This is not the fact. She was on highway No. 101 and was going to remain on it. She was making no turns whatsoever in the sense that she was leaving one highway to turn into another.

The question of who entered the intersection first is section is so vague that this question could not be answered at the trial.

Pertinent statutes are as follows:

57-7-113 (a) UCA, 1943. "No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

57-7-113 (c) (as amended by the laws of 1951) "The driver of every vehicle shall, consistent with the requirements of sub-division (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection. . . ."

57-7-130 (b) (as amended by the laws of 1949) "At any intersection where traffic is permitted to move in both directions on each roadway left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such

center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection”.

I will refer to the two cases by the names of the plaintiff in each. In the Yeates case the Court made the following finding:

“that the defendant (Budge) negligently operated his vehicle in driving the same too fast for existing conditions, but that the sole proximate cause of the accident was the negligence of Bertha Yeates in making a left turn at the intersection in front of the defendant’s vehicle and when the defendant’s vehicle was in such close proximity to the Yeates vehicle as to constitute an immediate hazard.”

While in the Budge case we find the following finding (No. 2 & 4).

“the defendant Mrs. John B. Yeates negligently by failing to keep a proper lookout, by turning left into the plaintiff’s lane of traffic when the automobile of the plaintiff was so close as to be an immediate hazard, drove an automobile into the automobile of the plaintiff.(4) That the plaintiff was negligent in driving his automobile at an excessive rate of speed at the said intersection”.

I am mindful of the most recent case from this Court which is not yet in the reports. Lynn W. Martin, plaintiff v. Paul H. Stevens, defendant. No. 7731.

That case does not control here because the Court there specifically held that the plaintiff had the right of way. In this case the Court said:

“the negligence, or manner of driving, of the other driver was such that the driver appraising the situation was alerted to it or by using due care would have been so alerted in time so that by the exercise of ordinary precaution he could have avoided the collision.”

In that case this Court extensively reviewed the intersection cases, and cases involving negligence as a matter of law, and it is not necessary to again cite and quote from each case. In the present case the Court found Budge guilty of negligence in speeding into the intersection. It was not for the negative question of failing to see something he should have seen. It must be kept in mind that courts constantly talk of the “favored driver”. In our case there is no such driver. Budge had no reason to know or expect which highway Mrs. Yeates would take (tr. 78), and Budge testified:

Q. Now, Mr. Budge, when you came up the highway on the day of this accident, who do you calculate or believe had the right of way?

A. Well, there wasn't no reason to believe there was anybody had the right of (way). I see the ambulance come along the road and there was a car immediately ahead of me. I'd say about probably three hundred feet, and as I met the ambulance just about opposite the Phillips 66 Service Station, about the pumps, and I pro-

ceeded on through the intersection, and I would judge Mrs. Yeate's car was about—oh, when I met the ambulance I guess about five or 600 feet down the road.”

He seemed to be confused and had no idea, (in his mind) which highway Mrs. Yeates was going to take. She was not passing any vehicles as she entered the intersection, but was in her left lane, so that Budge should have concluded that she would follow highway 101 to Nibley (tr. 46 & 47). But, he did nothing. He kept up his speed, which the Court specifically found was too fast. He did not even turn or apparently not attempted a turn. (tr. 43 & 44) “A. His (Budges skid marks) didn't have any angle. They came straight up the road.” (Note reporters map-last page of transcript.)

It appears to me that the question here is: Can a person cross an intersection at an excessive speed for conditions of the intersection, have a wreck in the intersection, and still not be guilty of negligence which substantially contributed to the accident? Budge testified: (tr. 72) Q.

Q. Well, you said before you didn't know whether the ambulance was going to turn into 101 or into highway 1, so you slowed down.

A. Well, the ambulances have the right of way on all roads regardless of which (way) they're going or where. You're supposed to give them the right of way.

Q. Oh, I see. You gave the ambulance the right of way?

A. I wasn't in the intersection then. I slowed down to make sure I wouldn't be in the intersection at the time the ambulance passed through there.

Q. But, you didn't slow down for Mrs. Yeates?

A. There was no signal or anything that she was going to cross then.

Q. There was no signal by the ambulance?

A. The ambulance doesn't have to give one. He can cross any road at any time without any signal.

A. I knew an ambulance or a doctor or anything had the right of way.

Q. But you did believe the ambulance had the right of way, over you, but you had it over Mrs. Yeates?

A. I believe I had the right of way coming into the intersection but Mrs. Yeates hadn't indicated she was going to cross the intersection, and I could have yielded to her if I would have known".

I concede the proposition that the mere exceeding of a speed limit does not always bar a recovery by the one exceeding the limit. That is because the excess speed may not be a negligent operation of the vehicle. But, where at an intersection the excess speed is negligent, and places the car at the exact point of impact, then it does bar arecovery. This point is well stated in *All American Bus Lines v. Saxon*, (Okla.) 172 P. 2d 424 where the Court said:

“Possibly the bus driver could not be charged with negligence because of any act committed after being confronted with a sudden emergency, placing his bus and his passengers in a position of peril, but if he was negligent in operating the bus at an excessive rate of speed such as was instrumental in bringing about the emergency and creating the position of peril, the bus driver was not excusable.”

The reason Budge could not turn to the left of the center of the intersection as the statute requires him to do, was because of his excessive speed, as found by the Court; it was not because it was impractical to do so. Instead, he deliberately tried to turn right of the center and in front of Mrs. Yeats. He might avoid the consequences of a mistake in judgment in an emergency, but not when his own negligence creates the emergency. This is well stated in *Allen v Schultz*, (Wash.) 181 P. 916:

“The cause of his (driver) being placed in the perilous situation and his acts in extricating himself therefrom are disclosed by his own testimony. Since the testimony shows conclusively that he was guilty of negligence, there was no question for the jury.”

The finding in our case was that Mrs. Yeates had turned suddenly in such a manner as to cause an immediate hazard, and then the Court finds, in both cases that Budge was guilty of negligence by excessive speed, and too fast for existing conditions. Had the Court found Budge free from negligence, some reason

could exist for the decision, but finding negligence is the same as finding that Budge did not act with due caution and diligence.

Turning to the evidence we find that Mrs. Yeates was 190 feet away from Budge when he began to notice her (tr. 51). King testified for Budge: "Q. Was there any obstruction whatsoever on the highway that would create a hazard had he driven to her west? A. No." And yet he struck Mrs. Yeates while still traveling at the rate of 20 mph sliding his tires for 41 feet, and Mrs. Yeates had slid hers for 37 feet. (tr. 109).

Gambrel v. Duensing, (Cal.) 16 P. 2a284, is a case where a motorist came upon some horsemen from their rear. A horse slipped and the motorist tried to avoid responsibility by invoking the doctrine of sudden emergency.

"In other words, if one who fails to exercise ordinary precautions when approaching or about to pass an animal is suddenly confronted with additional peril by reason of the movement of that animal, and injury results therefrom, responsibility is not lifted from the shoulders of the one failing to exercise such reasonable precautions."

This rule is probably better stated in the California case of *Throwbridge v. Briggs*, 35 P. 2d 426. "This doctrine is not available to them, as it is never available to relieve one from the consequences of a vehicular collision unless he is himself otherwise without negligence."

Apparently the lower Court went astray by the holding in the Cederloff case decided by this Court. (tr. 115). Cederloff v. Whited, 169 P. 2d 777. Here the defendant was making a left turn (not at an intersection) directly in the line of plaintiff's car.

The Court in that case held that even though plaintiff had kept a proper lookout he could not have done other than he did. Furthermore, that case went on the theory of a left hand turn into opposing traffic. There is no question of a turn in this case. No finding was made in the Cederloff case of the plaintiff's negligence. In fact the holding was that plaintiff was free from negligence because he had no other course he could take, regardless of what defendant had done. Apply that reasoning to our case. The other course Budge could have taken was to have driven in a cautious manner, and if he had done so no accident could possibly have happened.

I have tried to find a Utah case parallel to this where there was a specific finding of negligence, which negligence had placed a party in a position of peril, or given rise to an emergency created by the party trying to recover, but am unable to do so.

It should be kept in mind that in this case Budge struck Mrs. Yeates when she was practically stopped (tr. 9), and that she could do nothing to avoid the impact. When Budge belatedly realized there was going to be a crash he turned in the wrong direction (tr.

48). He should have given the situation at the intersection his attention as stated in the Washington case of *Tacket v. Milburn*, 218 P. 2d 298:

(Appellant was following a car too closely) "His duty was to give his attention to this situation. When he belatedly returned his eyes to the car ahead an emergency existed, but it was one of his own making, and he cannot avail himself of the emergency rule".

Budge had no right to assume that Mrs. Yeates would take highway No. 1. He travelled the highway five times a week, between Ogden and Logan (working in Ogden—going in the mornings and returning at about this time at evening) and knew all of the travel over 101 to Nibley, Millville, Providence, Hyrum, Paradise and Avon, from Logan (tr. 49). One of the few places left in Utah where travel is to the right of the center of the intersection is around the Brigham Young Monument in Salt Lake City. The old buttons in the center of the intersections have all been removed, and the law changed accordingly, so that cars that come to an intersection shall pass to the left of the center whenever practicable. It would be inconcievable to do otherwise at this intersection, and the only reason why this was not done was because of the excessive speed of Budge.

There are countless cases on the subject at hand, and many of these have been collected in the Annotation in 77 ALR 582. However, unless a case almost

exactly in point is found, they do not appear to be much help by applying generalities.

A case exactly in point is found in the recent case of *Graham v. Roderick*, (Wash.) 202 P. 2d 253. This court said:

“Therefore, what appellant now asks is that we hold that the preponderance of the evidence supports a ruling that the accident would have happened if, rather than traveling at some speed in excess of 35 miles per hour, he had been proceeding at the legal rate of 25 miles per hour. We may agree that what appellant contends for is a possibility, but under the evidence in the record it is too remote a possibility, to allow us to conclude that his excessive speed was not a contributing proximate cause of the collision.... Since appellant, while traveling at a speed in excess of 35 miles per hour, observed respondent's car in time to slow down and swerve to his left so as to deal only a glancing blow, although at the time he thought he could avoid the impact entirely, it is more than probable, in fact almost certain, that, if appellant had been traveling at the legally prescribed rate, the collision would have been averted.”

That case is very interesting because it involves a driver making a “U” turn on an arterial highway. In our case both highways were are arterial.

Respectfully submitted.

Geo. D. Preston,

Attorney for appellants.